

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 378 of 1997

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 : NO

RAMESHBHAI VASUDEV VYAS

Versus

SUMITRABEN RAMESHBHAI VYAS

Appearance:

MR HM PARIKH for Petitioner
MR SK BUKHARI for Respondent No. 1
MR SR DIVETIA APP for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 29/07/98

ORAL JUDGEMENT

Heard learned advocates for the respective parties.

2. This application under Section 397 read with Section 401 CrPC has been preferred by the husband who

has been ordered to pay maintenance to his estranged wife, Opponent No. 1 herein. It is not disputed that the applicant and the Opponent No. 1 were married in accordance with Hindu rights. It appears that after some eight years of marriage, applicant and Opponent No. 1 were estranged and had separated. Opponent No. 1 filed Misc. Criminal Application No. 71 of 1991 before the learned Judicial Magistrate, First Class, 2nd Court, Baroda under Section 125 CrPC and claimed maintenance. The said claim was opposed by applicant on the ground that Opponent no. 1 was living in adultery and she was not entitled to maintenance from the applicant. The learned Magistrate having considered evidence on record, concluded that the Opponent No. 1 was living in adultery with one Navinchandra Pandya and was not entitled to maintenance from the applicant. He, therefore, under his judgment and order dated 27th September, 1993 dismissed the application.

Feeling aggrieved, the Opponent No. 1 preferred Criminal Revision Application No. 187 of 1993 before the learned Addl. Sessions Judge, Baroda. The learned Addl. Sessions Judge, having considered the facts brought on the record, held that the applicant had failed to establish the allegations of adultery by producing cogent documentary evidence. He, therefore, under his judgment and order dated 1st July, 1997 allowed the revision application and directed the applicant to pay monthly maintenance of Rs. 400/- to the Opponent No. 1. Feeling aggrieved, the applicant has preferred the present application.

Mr. H.M Parikh, the learned advocate for applicant has read over the judgment and order of the learned Magistrate and has also read over the relevant evidence. He has submitted that the learned Magistrate had rightly appreciated the evidence brought on record and had rightly held that Opponent No. 1 was living in adultery with Navinchandra Pandya. Mr. Parikh has contended that whether the Opponent No. 1 was living in adultery or not is a question of fact and the learned Addl. Sessions Judge exercising his revisional jurisdiction ought not to have interfered with finding recorded by the learned Magistrate. He has, therefore, submitted that the judgment and order of the learned Addl. Sessions Judge require to be quashed and set-aside. He has further contended that even otherwise, the learned Addl. Sessions Judge is not right in holding that the applicant had failed to establish the allegation made against Opponent No. 1 by producing cogent documentary evidence. Mr. Parikh has submitted that

there may not be any documentary evidence in respect of a woman's living an adulterous life. He has, however, relied upon the admission made by the Opponent No. 1 to the effect that she was indeed living with said Navinchandra Pandya. Further, wife of said Navinchandra Pandya, one Hemlataben, had left the house of said Navinchandra alongwith children and said Navinchandra has agreed to pay maintenance to his wife Hemlataben and their children. Earlier also, the opponent No. 1 had run away with said Navinchandra and the offence registered in respect of the said incidence was compromised and the opponent No. 1 agreed to go and reside with the applicant. Mr. Parikh has submitted that the aforesaid evidence is sufficient to infer that the Opponent No. 1 was living an adulterous life with said Navinchandra.

Mr. Bukhari, learned advocate appearing for Opponent No. 1 has contested this application and has submitted that findings recorded by the learned Magistrate were perverse and the learned Addl. Sessions Judge had rightly interfered with the said finding and had substituted the same with his own findings. He has, therefore, supported the impugned judgment and order of the learned Addl. Sessions Judge.

In my view, Mr. Parikh is right in contending that the learned Magistrate had recorded the findings after appreciating the evidence brought on the record and the inference drawn by the learned Magistrate cannot be said to be perverse or based on no evidence. The finding recorded by the learned Magistrate is thus based on sound reasoning and on an appreciation of the evidence brought on the record. The learned Addl. Sessions Judge exercising its revisional jurisdiction ought not to have interfered with the finding of fact recorded by the learned Magistrate. Even if two views were possible, unless the findings recorded by the learned Magistrate were found to be perverse or based on no evidence, the learned Addl. Sessions Judge ought not to have interfered with the said finding and substituted the same by his own.

For the reasons recorded hereinabove, the impugned judgment and order dated 1st July, 1997 of the learned Addl. Sessions Judge, Baroda, passed in Criminal Revision Application No. 187 of 1993 is quashed and set aside. The judgment and order dated 27th September, 1993 passed by the learned Judicial Magistrate, First Class, 2nd Court, Baroda in Misc. Criminal Application No. 71 of 1991 is restored. Application is allowed accordingly.

Rule is made absolute. Parties shall bear their own costs.

Prakash*